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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,045	03/13/2004	Charles P. Plant	1004-01	6729
45105 7590 06/09/2008 LAW OFFICE OF JILL SHEDD & ASSOCIATIONS, P.C. 430 FRANKLIN VILLAGE DR #212 FRANKLIN, MA 02038				
			EXAMINER	
			BEN, LOHA	
			ART UNIT	PAPER NUMBER
			2873	
			MAIL DATE	DELIVERY MODE
			06/09/2008 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/799,045

Applicant(s)

PLANT ET AL.

Examiner

LOHA BEN

Art Unit

2873

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 13-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10 and 13-16 is/are rejected.
- 7) ☒ Claim(s) 9 and 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

The terminal disclaimer filed February 28, 2008 has been received, and noted with appreciation.

The Amendment dated February 28, 2008 shows no major changes to the rejected claims, and especially fails to further provide a characteristic, or property, or a limitation to independent claim 1 that would substantively differentiate the invention of claim 1 from the prior art used against it. Namely, as now recited in claim 1, the optical navigation chip, absent further limitation, is equivalent to detecting elements 23 and 25 of Cornsweet et al. Similar reasons apply also to other references used against claims previously.

With regard to the statement made by Applicants in second paragraph from the bottom of page 5 contending that the CCD video camera of Cornsweet et al is not for tracking eye movement, the examiner strongly disagrees. See abstract, column 1, lines 6-10 and column 2, lines 3-5 of Cornsweet et al.

In light of the above, the arguments made by Applicants in the Amendment of February, 2008 are not persuasive. Therefore, all claims that were previously rejected under "102" and "103" still stand rejected on the same grounds.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 2873

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-4, 12 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Cornsweet et al.

See previous Office action.

Claims 1-7, 10, 12, 15 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Rothberg et al.

See previous Office action.

Claims 1 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith.

See previous Office action.

Claims 1-4, 12, 13 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Yee et al.

See previous Office action.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cornsweet et al.

See previous Office action.

Claims 8 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rothberg et al.

See previous Office action.

Allowable Subject Matter

Claims 9 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LOHA BEN whose telephone number is (571)272-2323. The examiner can normally be reached on M-SAT, generally between 12:01 p.m. to 8:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Mack, can be reached on M-F, at (571) 272-2333. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2873

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

June 6, 2008

/Loha Ben/
Primary Examiner, Art Unit 2873